IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1892 of 1995 (O&M)
Date of decision: 22.05.2013

United India Insurance Company Limited, Rewari, through Shri S.K.Bansal, Dy. Manager, Sector 8-C, Chandigarh.

...Appellant

versus

Smt. Kamlesh Devi widow of Ranjit Singh, resident of Village Kanhora, Tehsil and District Gurgaon, and others.

....Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Inderjit Sharma, Advocate,
for Mr. Pradeep Bedi, Advocate,
for the appellant.

None for the respondents.

K.Kannan, J. *(Oral)*

1. The appeal is at the instance of the Insurance Company whose grievance is that in a case of collision between the insured's tractor and the matador, the Court has found the driver of the tractor alone to be liable. The learned counsel for the insurer would point out to the fact that the claimants, who were the representatives of a passenger in the matador, had pleaded that the drivers of both the vehicles had been responsible for the accident since both of them were driving rashly and negligently. Before the trial Court, the Insurance Company was relying on recitals in the FIR which attributed the negligence to both drivers and, therefore, that should be taken as relevant. The Tribunal, however, found that the author of the FIR had not been examined and, therefore, the driver of the

tractor must alone taken to be liable. The inference is clearly wrong and I find that both the vehicles were responsible for the accident. As far as the claimants were concerned, who were representatives of the passenger, they were entitled to take the situation as result of composite negligence of both the vehicles and allow for the claim for compensation against any one of the tort feasors. If the Tribunal has, therefore, assessed the compensation at ₹ 2,99,000/- and has provided for a right of recovery against the insurer of one of the tort feasors only, the modification in the finding shall be that both the vehicles were liable. I would, however, allow for an insurer to seek for recovery of the amount from the owner and driver of the tractor for the 50% of the amount covered under the award. No portion of the claim as awarded already shall abate as far as the claimants are concerned and the relief granted through this judgment shall be to provide to the insurer a right of recovery of 50% of the amount to the owner and driver of the matador who are the respondents 3 and 1 respectively.

2. The award stands modified as regards the liability and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

22.05.2013
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